Supreme Court, U.S.
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NO. 93-735

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

N. WALTER GOINS, Petitioner,

v.

DALE W. LANG, ET AL., Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

REPLY BRIEF

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BEST AVAILABLE COPY

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N. WALTER GOINS, Petitioner,

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY BRIEF

Petitioner, N. Walter Goins, hereby files this reply to the Brief in Opposition of Respondents Syndicated Communications, Inc. ("Syndicated"),

Syncom Capital Corp. ("Syncom"), and Broadcast Capital, Inc. ("Broadcap"), hereinafter collectively the "SBIC's".[1]

I.

REPLY STATEMENT OF THE CASE

A. The District Court Docket.

Respondent SBIC's claim most notably in their responsive brief that there is no evidence of any error in the district court docket below. Br. in Opp. at p. 25. With respect to this assertion, Petitioner submits to this Court in his Reply Appendix a copy of a document filed on Petitioner's behalf in the district

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[1]Each of the named respondents in this case (although denominating themselves as the "Banking Respondents") is an SBA licensee under the Small Business Administration Act of 1958--hence, SBIC's or Small Business Investment Corporations.

court on April 08, 1992 styled "Plaintiff's Affidavit of Damages." This document, which bears the stamp of the District Court for the Minnesota District (including its date-stamp of April 08, 1993) nowhere appears in the docket previously generated by the District Court on appeal the Court Appeals so as to reflect the April 08, 1993 filing.

Petitioner must reluctantly conclude that this document was erroneously or intentionally omitted from the district court docket, despite the fact that the docket had not closed on that date. This Court in reviewing a matter on petition for certiorari may take notice of the docket as transmitted to the Court of Appeals by the District Court.

II.

REASONS FOR GRANTING REVIEW

A. This Court's Authority Over Matters Of Procedure

Respondent SBIC overlooks this Court's traditional and well-settled responsibility to review matters involving federal procedural rules and jurisdictional statutes (apart from its long-established role of interpreting the Constitution; see Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803).

The special supervisory role of this Court in establishing and settling issues of federal court procedure negates the SBIC's asseverations that this case

involves matters merely "episodic" and "academic". Br. in Opp. at p. 26.[2]

The issue at hand, as conceded by the Respondents, is whether an infra-district court removal such as that involved in this case can operate to deny Petitioner a default judgment against

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[2] This Court has repeatedly recognized as "certworthy" cases in which it was called upon to interpret Federal Rules and procedural/jurisdictional statutes. See Thermtron Products, Inc. v. Hermansdorfer, 423 U.S. 334 (1976); Bruner v. United States, 343 U.S. 907 (1952) (holding that Congress has the power to determine federal District Court jurisdiction under the Tucker Act; Marshall v. United States, 360 U.S. 310 (1959) (holding that this Court "[i]n the exercise of [its] supervisory power to formulate and apply proper standards for enforcement of the criminal law in the federal courts" may order new trial); Zahn v. International Paper Company, 414 U.S. 291 (1973) (interpreting the proper application of Rule 23(b)(3) and 28 U.S.C. § 1332); Hickman v. Taylor, 329 U.S. 495 (1947)(deciding scope of discovery rules).

defendants who fail to timely answer in the district court. However, notwithstanding the particular merits of Petitioner's claims, the Respondents' Brief in Opposition raises many and more serious questions than it answers. [3]

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[3]Respondents argue at p. 26 of the Brief in Opposition that Local Rule 201 "provides an alternative basis for the decisions below." Local Rule 201 (as set forth at p. 27 of the Petition) merely refers those cases that are **otherwise** properly removed. Petitioner asserts that cases originally filed in the federal District Court (the court to which removal is taken) are not be subject to "infra-district court" removal, notwithstanding the additional constitutional pitfalls which result from such "removals". Their contention, therefore, that Petitioner has not contested this issue below is meritless and incorrect.

B. Respondents' Brief Raises the Fundamental Issue Whether Article III Courts May "Farm Out" Their Jurisdiction to Article I Courts.

Despite the argument of Respondents that this petition is somehow frivolous, it is apparent that their Brief in Opposition urges and suggests the Court's blithe acceptance of a federal jurisdictional framework wherein Article III federal courts are permitted not only to decide whether they properly have jurisdiction over a specific case or controversy, but to establish the "regulations and exceptions" as to law and fact for the exercise of the judicial power established by the Constitution.

The position espoused by the Respondents is further aggravated by the fact that under the circumstances in this

case, the role of the Article III court in determining or defining its jurisdiction regarding a particular kind of case is not limited to only constitutionally-mandated Article III courts--but, rather it would extend that power to establishing and defining the jurisdiction of Article I (legislative or Congressional) courts with regard to cases or controversies as they are defined by Article III's judicial power clause.

C. THE SEPARATION OF POWERS

The doctrine of the Separation of Powers applies no less to the judiciary than to the remaining two branches of the Federal Government. See and cf. INS v. Chadha, 462 U.S. 919 (1983); Buckley v. Valeo, 424 U.S. 1 (1976); and Youngstown

Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952). In Youngstown, supra, Justice Frankfurter stated in his concurring opinion: "Not so long ago it was fashionable to find our system of checks and balances obstructive to effective government. It was easy to ridicule that system as outmoded--too easy. The experience through which the world has passed in our own day has made vivid the realization that the Framers of our Constitution were not inexperienced doctrinaires. These long-headed statesmen had no illusion that our people enjoyed biological or psychological or sociological immunities from the hazards of concentrated power. It is absurd to see a dictator in a representative product of the Mississippi Valley. The

accretion of dangerous power does not come in a day. **It does come, however slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority."** (Italics not in original) Youngstown Sheet & Tube, supra at pp. 593-94.

It would seem that this Court has implicitly acknowledged that the restraint of divided powers as contemplated in the Framers' elaboration of the Separation of Powers doctrine applies to the Judicial Branch equally as well as to those branches which play an explicitly representative role in our in democratic system.

What then are the limits on the Judiciary within the confines of a case

or controversy properly before it? It would seem that the best point of reference for defining these limits is the Constitution itself, and the roles which it assigns to the separate branches define within its several articles.

Respondents in arguing that it was within the power of the Bankruptcy Court to decide its jurisdiction, and subsequently within the discretion of the District Court to accept their motion for filing, have therein misconceived or misconstrued the essential and foremost issue in this case. That issue revolves around the legitimacy of the District Court to define its own jurisdiction and that of the Bankruptcy Court with regard to this case, at all.

While courts clearly have the power to decide their jurisdiction with regard to a specific case before them, it is however a matter of some constitutional interest whether courts (operating under the judicial power of our Constitution) may define or establish the jurisdiction of Article I courts or that of cases which they hold are not directly before them for decision.

The Constitution has struck the balance of determining the regulation of jurisdiction with regard to classes or a class of "cases or controversies" by assigning this role to the Congress--not the Federal Judiciary. The Article III courts, may decide the existence of their jurisdiction over a particular case--but they may not determine the appropriate

jurisdiction of another court, or the class of cases over which they will or will not exercise jurisdiction. Nevertheless, that is essentially the state of affairs which the Respondents argue makes this case academic and episodic--the state of affairs they argue is of no constitutional significance.

D. The Evidence.

Petitioner also notes that Respondents have argued that there is no evidence that the docket is incorrect. As stated above, Petitioner includes in his Reply Appendix a copy of a document filed April 08, 1992 in the District Court in contradiction of Respondents' allegation at p. 25 of their Brief in Opposition.

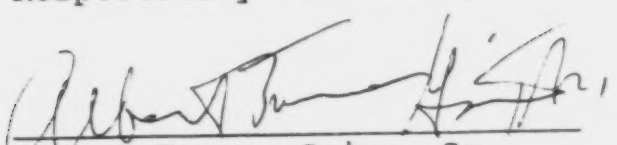
III.

CONCLUSION

Because this Court plays a special role in deciding matters of procedural significance in the federal judicial system, and because Respondents' own Brief in Opposition raises more concerns than it resolves, including suggesting that Article III courts may now define the jurisdictional limits which are properly the task of the Congress to regulate--this Court should grant certiorari to decide if the jurisdictional scheme in the court below violates the doctrine of Separation of Powers, and by so doing, decide the merits of the Petitioner's individual claims set forth in his petition to this Court.

Dated: 1-6-94

Respectfully submitted,



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APPENDIX

1. PLAINTIFF'S AFFIDAVIT OF DAMAGES
   PP.1-4.

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF MINNESOTA

FOURTH DIVISION

N. Walter Goins,

Plaintiff,

v.

Dale W. Lang, et al.,

Defendants.

STAMP OF DISTRICT COURT - 4-8-92

Case No: 4-92cv154(HHM)

Plaintiff's Affidavit of Damages.

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1. Pursuant to the Rule 55 of the Federal Rules of Civil Procedure, Albert Turner Goins, Sr., as counsel for Plaintiff, N. Walter Goins, submits this affidavit of damages and the amount due in support of Plaintiff's request to the clerk of this Court for an entry of judgement by default against defendants Syndicated

Communications, Inc. and Broadcast Capital, Inc. in the above styled case, No. 4-92cv154(HHM). Defendants Syndicated Communications, Inc., and Broadcast Capital, Inc. (hereinafter "Syndicated" and "Broadcap", respectively) have acknowledged service of the summons and complaint in this proceeding. Copies of said acknowledgements are made a part of this affidavit. Syndicated and Broadcap were served and acknowledged service no later than March 17, 1992. Defendants Syndicated and Broadcap have failed to answer or defend in this matter as required by law, statute and rule.

2. Plaintiff, N. Walter Goins, by his complaint demanded damages from the defendants Syndicated and Broadcap in the

threefold amount of $2,138,500.00 [3x Two Million One Hundred Thirty-Eight Thousand Five Hundred Dollars], and plaintiff demanded additional damages in the amount of $2,138,500.00 [Two Million One Hundred Thirty-Eight Thousand Five Hundred Dollars]; for a total amount of $12,754,000.00 [Twelve Million Seven Hundred Fifty-four Thousand Dollars] total plus legally allowed interest from the date of entry of judgement.

3. Plaintiff's attorney hereby states pursuant to Rule 55 of the Fed. R. Civ. P and title 28 U.S.C. §1746 that the amount owed by the defendants Syndicated Communications, Inc. and Broadcast Capital, Inc., severally and/or jointly is $12,754,000.00 [Twelve Millions Seven Hundred Fifty-four Thousand Dollars.]

4. Plaintiff, N. Walter Goins, therefore, requests by his counsel, that judgement be entered for him according to law against defendants Syndicated Communications, Inc., and judgement be entered against defendant Broadcast Capital, Inc., for the amount of Twelve Million Seven Hundred Fifty-four Thousand and no/100ths Dollars.

Dated: April 8, 1992 By:_____
Albert Turner Goins

Atty. No. 126159x

Albert T. Goins
Attorney for Plaintiff,
N. Walter Goins, III
1729 East County Road D
Maplewood, MN 55109-5305
(612) 777-4757 ph.

Statement in of Albert Turner Goins, Sr. pursuant to title 28 U.S.C. 1746.

1. I, Albert Turner Goins, Sr., am an attorney duly admitted to practice in this federal district court. I am attorney for plaintiff, N. Walter Goins in case number 4-92cv154(HHM) in which defendants Syndicated Communications, Inc. and Broadcast Capital, Inc. were served with a summons and complaint. Said service was properly acknowledged by defendants Syndicated communications, Inc. and Broadcast Capital, Inc. no later than March 17,1 992, and said defendants have failed to defend in this matter within the time prescribed by law or within twenty days.

2. Attached are true and correct copies

of the acknowledgements of defendants Syndicated Communications, Inc. and Broadcast Capital, Inc. made pursuant to Rule 4 of the Federal Rules of Civil Procedure.

3. These statement are made under penalty of perjury on the date hereafter.

Dated: April 8, 1992 By_____
Albert Turner Goins